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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TIMOTHY ANDREAS MESERTH and
HEATHER N. STERLING

Appeal 2011-001316
Application 10/075,861
Technology Center 2100

Before: JOSEPH L. DIXON, ST. JOHN COURTENAY, and
THU A. DANG, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-21. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

A. INVENTION

Appellants invented a system and method for controlling real-time display with a user positionable icon. (Spec. 1). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

B. ILLUSTRATIVE CLAIM

Claim 1, which further illustrates the invention, follows.

1. A method of representing real time data in a graphical format on a display of a data processing system, comprising:

providing a user positionable icon as a portion of the display;

determining the position of the icon; and

refreshing the graphical representation responsive to receiving a new data point, wherein the position of the icon determines how much historical data is retained in the refreshed display.

C. REFERENCES

The Examiner relies on the following references as evidence:

Takahashi	US 5,999,162	Dec. 7, 1999
Venolia	US 2008/020447 7	Aug. 28, 2008

D. REJECTION

Claims 1- 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takahashi and further in view of Venolia.

II. ISSUE

Has the Examiner set forth a sufficient showing of obviousness of independent claim 1? Specifically, does the combination of Takahashi and Venolia teach or fairly suggest the claimed "providing a user positionable icon as a portion of the display; determining the position of the icon; and refreshing the graphical representation responsive to receiving a new data point, wherein the position of the icon determines how much historical data is retained in the refreshed display"?

III. PRINCIPLES OF LAW

35 U.S.C. § 103

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in

Graham v. John Deere Co., 383 U.S. 1, 17 (1966). “[T]he Examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore, “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007)(quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The question of obviousness is "based on underlying factual determinations including . . . what th[e] prior art teaches explicitly and inherently . . ." *In re Zurko*, 258 F.3d 1379, 1383 (Fed. Cir. 2001).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

IV. ANALYSIS

From our review of the showing in the Answer at pages 3-10, we adopt the Examiner's findings of fact and responses to Appellants' arguments as our own.

Appellants argue independent claims 1, 8, and 15 as a group, and we select independent claim 1 as the representative claim for all the claims at issue. (App. Br. 5).

Appellants contend at pages 5-8 in the Appeal Brief that the Decision the Board in Appeal No. 2008-2296, mailed November 19, 2008, is *res judicata* with respect to various elements of the claimed invention.

Appellants cite no authority for this contention and are informal with the citations to the record, and further combine various quotations from the Decision with their own contentions. We find Appellants' arguments are unpersuasive with respect to the holding of our prior Decision.

We previously held that the combination did not teach or suggest the claimed invention and that Takahashi did not teach the use of an icon. Here, the Examiner has set forth a different combination of teachings and has relied upon the teachings of Venolia to teach or suggest the use of an icon on a graphical user interface which allows a user to vary the amount of historical data included on the display. The Examiner stated "[i]n the same field of the invention, Venolia teaches a graphical display with data adjustment similar to that of Takahashi et al. In addition, Venolia further teaches the user positionable icon as a portion of the display." (Ans. 4). We agree with the Examiner's finding.

As we stated in our prior Decision, "the end result of moving the graphical representation when refreshed to retain a predetermined amount of historical data is similar between Takahashi and the claimed invention, it is the manner in which the claimed invention achieves the end result which is being specifically claimed." (Decision 5). Takahashi teaches the basic claimed invention, but does not identify an interface for the user to set the amount of historical data to be displayed. The Examiner remedied that deficiency in the present combination with the teachings of Venolia which teach the well-known use of a graphical user interface using icons to set

various quantities. Since the use of icons on a graphical user interface are taught and suggested in the prior art, we agree it would have been obvious to one of ordinary skill in the art to apply that type of interface to the basic methodology and end result display of Takahashi for the same reasons proffered by the Examiner.

Appellants argue that the display of Venolia is not a graphical display of real-time data and there is no disclosure that the display is refreshed responsive to receiving a new data point. (App. Br. 9). The Examiner has relied upon the teachings of Takahashi to show these claimed features for the type of data. (Ans. 3). Therefore, Appellants' argument does not show error in the Examiner's showing of obviousness.

Consistent with *KSR*, the Federal Circuit recognized that “[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not.” *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 550 U.S. at 416). The Federal Circuit relied in part on the fact that *Leapfrog* had presented no evidence that the proposed modification was “uniquely challenging or difficult for one of ordinary skill in the art” or “represented an unobvious step over the prior art.” *Id.* at 1162.

Similarly, the Federal Circuit recently found that adapting existing electronic processes to incorporate modern technology is obvious when the combination is within an ordinarily skilled artisan’s ability:

When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the

known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense.

Muniauction, Inc. v. Thomson Corp., 532 F.3d 1318, 1327 (Fed. Cir. 2008) (quoting *KSR*, 550 U.S. at 421).

Appellants have provided no persuasive evidence on this record establishing that these improvements would have been beyond the level of skilled artisans. *See id.* (“[I]f a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill.”); *Muniauction*, 532 F.3d at 1327; *Leapfrog*, 485 F.3d at 1162.

Appellants also argue that paragraphs [0047] and [0081] do not teach or suggest "the position of any icon determining, upon receiving a new data point, how much historical (real time) data is retained on a graphical representation of real time data that is refreshed responsive to receipt of a new (real-time) data point" (App. Br. 9). While we agree with Appellants that the totality of the argument is not taught by Venolia, the Examiner did not rely upon the teachings of Venolia for all the argued limitations. In the Examiner's proffered rejection Takahashi teaches a user adjustable value for the amount of historical data displayed (wind-up position) and Venolia teaches a well-known graphical user interface with an icon for the user to adjust the value as shown by the changes in scale for historical value in Venolia. Therefore, we do not find Appellants' argument persuasive of error in the Examiner's showing of obviousness regarding independent claim 1. Therefore, we will sustain the rejection of independent claim 1. Appellants have not set forth separate arguments for the patentability of dependent

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claims 2-7 and independent claims 8 and 15 and their respective dependent claims. Therefore, these claims fall with independent claim 1.

V. CONCLUSION

For the aforementioned reasons, the Appellants have not shown that the Examiner erred in rejecting independent claim 1 over the combination of Takahashi and Venolia.

VI. ORDER

We affirm the obviousness rejection of claims 1-21.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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